

**BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI**

Appeal No. AT006000000010399

M/s. Dhanashree Developers Pvt. Ltd.
Through Director Mr. Shankarrao A. Borkar
Corporation Office:
303 Western Edge-1, W.E. Highway,
Borivali (East), Mumbai 400 066.

..Appellant

Versus

1. Anil Kumar & Sudha Pillai
A-9, First Floor, Chanakya CHS
Gokhale Road, Near Ponkshe Watch Co.
2. Mrs. Hemlata & Nikhil Sawant
12, 1st floor, Kandpile Sadan,
B K Marg, Mulund East,
Mumbai 400 081.
3. Kum. Poonam G. Thadani
Room No.14, Snow White Co-op. Housing Soc.,
Near Aman Talkies, Ulhasnagar,
Thane 421 003.
4. Mr. Sukeerthi Kumar
305, Sindudurga Darshan CHS,
Navajeet Nagar, Juhu Versova Link Road,
Four Bungalows, Andheri (W),
Mumbai 400 053.

5. Sanjeev Vasudevan
B3/501, Riddhi Park,
Near Gaondevi Mandir,
Thakurli East
Thane 421 201
6. Mr. Amit M. Sawant,
E-704, Ritu World, Barrage Road,
Near Chandrashekhar High School,
7. Mr. Abhijeet D. Desai
1/16, Sadachar Sadan Bhai Jivanji Lane,
Thakurdwar,
Mumbai 400 002.
8. Mr. Jagadish R. Tambe
530/D-4, New Friends CHSL,
Sector 5, Charkop, Kandivali (W),
Mumbai 400 067.
9. Uday A. Nagvekar
A-702, Alok CHSL,
Sant Tukaram Road, Near Ganesh Talkies,
Mulund (East),
Mumbai 400 081.
10. S. Balasubramanian Gopalakrishnan
E/12, Kadambagiri CHS Ltd.
Rashmi Complex, Near Mental Hospital,
Thane (West) 400 604.

11. Chinna V. Dorai
Room No.9, 1st floor,
Priyadarshan Bldg, Opp. Panch Parmeshwar Mandir,
Kisan Nagar No.1,
Wagle Estate
Thane 400 604.

12. Kusum V. Dandekar
6/1/701, Neelam Nagar,
Mulund East, V.B. Phadke Road,
Mumbai 400 081.

13. Yogesh D. Tambe
A-502, Sai Aasha Daya CHS,
Near Neelam Nagar, Mulund East,
Mumbai 400 081.

14. Sujay & Vandana Valanju
8 Urankar Wadi,
Tatya Gharepure Path, Mugbhat Lane,
Girgaum, Mumbai 400 004.

15. Valenteena & Richard Mathias
201 Comfort CHS,
Sant Ramdas Road,
Mulund East, Mumbai 400 081.

16. Ravindra & Rajeshree Sawant
Rajeshree R. Sawant,
502, Samadhan Society,
L.T. Road, Near Hanuman Mandir,
Mulund East, Mumbai 400 081.

17. Datta Sawant

Takshila Building No.1,
Flat No. 22 'B' Wing,
Mahakali Caves Road,
Andheri (East), Mumbai 400 093.

18. Rakeshraj Pevekar

Flat A-1102, A-301, Usha Nagar
Near Panchayat Baudi,
Saraswat Colony,
Dombivali (East) 421 201.

19. Amol Patil & Suresh Patil

B/28, Jaswandi CHS,
Shreenagar, Wagle Estate,
Thane West 400 604.

20. Pratap N. Shingadia

Bldg. No.81, 1st floor, Room No. 6/8,
Prabhu Shreeram Mandir Marg
(4th Kumbharwada Lane),
Near Gol Deval,
Girgaon, P.O. Mumbai 400 004.

21. Rishiraj S. Patankar

C/o. A-9, Chanakya CHS Ltd.
Gokhale Road, Naupada,
Near Ponkshe Watch Company,
Thane 400 602.

.. Respondents

Mr. Sanjay Chaturvedi, Advocate for Appellant.
Mr. Rajesh Mudholkar, Advocate for Respondents

CORAM : INDIRA JAIN J.,CHAIRPERSON &

S.S. SANDHU, MEMBER(A)

DATE : 1st FEBRUARY, 2019.

COMMON JUDGMENT (PER : INDIRA JAIN, J.)

This appeal takes an exception to the orders dated 31st May, 2018 and 1st June, 2018 passed by the Ld. Chairperson, MahaRERA in Complaint Nos. CC/00600000023855, CC/00600000023877, CC/00600000023856, CC/00600000023929, CC/00600000044077 and CC/00600000023864. By the said order, parties have been directed to execute and register Agreement for Sale as per the provisions of Section 13 of RER Act within 30 days from the date of order with a timeline for handing over possession with Occupancy Certificate before ending December 2019.

2. Heard Shri Sanjay Chaturvedi, and Shri Rajesh Mudholkar, Ld. Counsel for appellant and respondents respectively.

3. Ld. Counsel for appellant submitted that order is ex-parte order and opportunity of hearing was denied to the developer. It is submitted that on 23rd May, 2018 an application was forwarded to the Authority expressing inability of an advocate to appear on 30th May, 2018. Without taking into consideration the reasons mentioned in the application, order came to be passed on the first date of hearing thereby depriving the

developer to set up his defence. Ld. Counsel submits that principles of natural justice have been violated and considering the strong defence available to the appellant, impugned order be set aside.

4. In response to the submissions on behalf of appellant, Ld. Counsel for respondents submits that complaints were filed somewhere in March - April, 2018. Immediately after filing complaints, declarations were placed on record showing service of copy of complaint on developer. It is submitted that developer had sufficient opportunity to engage an Advocate and appear on the date of hearing before the Authority. According to the Ld. Counsel, no sufficient cause is shown and appeal deserves to be dismissed with heavy cost.

5. On perusal of application dated 23.5.2018, it can be seen that the only cause for expressing inability to appear was that Counsel was to attend another matter before RERA Pune. Appellant was asked to produce copy of Roznama. The same is not filed. No reason is assigned for not producing the same.

6. In this connection, Ld. Counsel for respondent placed strong reliance on Bashir Ahmed V/s. Mehmood Hussain Shah [1995 (1) SCR 812] to submit that Counsel was engaged elsewhere cannot be a ground to seek adjournment. Ld. Counsel submits that Appellant had sufficient time to appoint an Advocate. It is submitted that till 30th May, 2018 even Vakalatnama was not filed on record before the Authority. It is submitted that no injustice has been caused and appeal deserves to be dismissed.

7. On perusal, we find that the impugned order is an ex-parte order. Though reasons assigned by appellant do not sustain in law, keeping in view factual scenario, we find it appropriate to remand the matters so as to avoid multiplicity of proceedings on trivial issues. Hence the following order :

Order

- i] Impugned Orders dated 30th May 2018 and 1st June, 2018 passed by the Ld. Chairman, MahaRERA are set aside subject to cost of Rs.50,000/- per complaint as condition precedent;
- ii] Appellant to deposit costs within two weeks failing which appeal shall be treated as dismissed;
- iii] Matters are remanded to the Ld. Chairperson, MahaRERA for their disposal in accordance with the law, preferably within four weeks from the date of depositing costs;
- iv] Parties to appear before the Authority on 12th February, 2019.


(S.S. SANDHU)

(INDIRA JAIN J)